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1 7CJAAMGP Plea  
1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----x  
2

3 UNITED STATES OF AMERICA,  
3

4 v. 07 SD 312 (RLE)  
4

5 SANTO C. MAGGIO,  
5

6 Defendant.  
6

7 -----x  
7

8 New York, N.Y.  
8 December 19, 2007  
9 11:30 a.m.  
9

10 Before:  
10

11 HON. RONALD L. ELLIS,  
12

13 Magistrate Judge  
13

14 APPEARANCES  
14

15 JAMES B. COMEY  
15 United States Attorney for the  
16 Southern District of New York  
16

NEIL BAROFSKY  
17 CHRISTOPHER GARCIA  
17 Assistant United States Attorney  
18

PAUL SCHECHTMAN  
19 Attorney for Defendant Maggio  
19

SCOTT E. HERSHMAN  
20 Attorney for Defendant Maggio  
21

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1 (Case called)  
2 MR. BAROFSKY: Neil Barofsky and Christopher Garcia  
3 for the government.

4 Good morning, your Honor.  
5 MR. SCHECTMAN: Paul Shechtman, for Mr. Maggio, with

6 Scott Hershman, for Mr. Maggio.  
7 THE COURT: Okay. I understand that he is going to be  
8 pleading to an information.

9 MR. SCHECTMAN: Correct, your Honor.

10 THE COURT: Has he waived indictment yet?

11 MR. SCHECTMAN: You have the paperwork. We're ready  
12 to waive.

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13 THE COURT: We will do those separately. Treat the  
14 waiver as it should be and then I'll consider the taking of the  
15 plea.

16 MR. SCHECTMAN: Sounds right.

17 COURTROOM DEPUTY: You are Santo Maggio?

18 THE DEFENDANT: Yes.

19 COURTROOM DEPUTY: Have you signed this waiver of  
20 indictment.

21 THE DEFENDANT: Yes.

22 COURTROOM DEPUTY: Before you signed it did you  
23 discuss it with your attorney?

24 THE DEFENDANT: Yes.

25 COURTROOM DEPUTY: Did he explain it to you?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand what you are doing?

3 THE DEFENDANT: Yes.

4 COURTROOM DEPUTY: Do you understand that you are  
5 under no obligation to waive indictment?

6 THE DEFENDANT: Yes.

7 COURTROOM DEPUTY: Do you understand that if you do  
8 not waive indictment, if the government wants to prosecute you  
9 they will have to present this case to a grand jury which may  
10 or may not indict you?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you realize by that by signing this  
13 waiver of indictment you have given up your right to have this  
14 case presented to a grand jury?

15 THE DEFENDANT: Yes, I do.

16 COURTROOM DEPUTY: Have you seen a copy of the  
17 information?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: Would you like for me to read it to you?

20 THE DEFENDANT: No.

21 COURTROOM DEPUTY: How do you plead?

22 THE DEFENDANT: Guilty.

23 COURTROOM DEPUTY: The case has already been assigned  
24 to Judge Stein.

25 MR. SCHECTMAN: Correct.

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1 MR. BAROVSKY: Your Honor, we consent to the defendant  
2 being released on his own recognizance.

3 MR. SCHECTMAN: We don't object to that.

4 THE COURT: Technically to the information you are  
5 supposed to plead "not guilty".

6 MR. SCHECTMAN: I think that is right and it is my  
7 apologies.

8 THE DEFENDANT: I plead not guilty now and then later  
9 of guilty.

10 MR. SCHECTMAN: Not guilty at this time, your Honor,  
11 but we will be entering a guilty plea.

12 THE COURT: Objection. All right. Now, the actual  
13 plea has been referred by Judge Stein; is that it?

14 MR. BAROFSKY: Yes, your Honor.

15 THE COURT: And how many counts in the information?

16 MR. BAROFSKY: Your Honor, there are four counts.

17 THE COURT: What is he pleading to?

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18 MR. BAROFSKY: All four counts, Judge.  
19 THE COURT: Okay. Mr. Maggio, this matter has been  
20 referred to me before Judge Stein for the purpose of taking  
21 your plea. Did you consent to proceed before a United States  
22 magistrate judge on your felony plea allocution?

23 THE DEFENDANT: Yes.

24 THE COURT: Before you signed it did you discuss it  
25 with your attorneys?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did they explain it to you?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that you have an  
5 absolute right to have this proceeding before a United States  
6 district judge?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: You are voluntarily proceeding before a  
9 United States magistrate judge?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Maggio, you are charged in a four  
12 count information. Count One of the information charges you,  
13 well, conspiracy to commit securities fraud, wire fraud, bank  
14 fraud and money laundering and to make false filings with the  
15 SEC and material misstatements to auditors in violation of  
16 Title 18 U.S.C. Sections 371. This crime carries a maximum  
17 sentence of five years imprisonment, a maximum fine which is  
18 the greatest of either \$250,5000 or twice the gross pecuniary  
19 gain derived from the offense or twice the gross pecuniary loss  
20 to persons other than yourself as a result of the offense.  
21 There is a \$100 special assessment and a term of supervised  
22 release of three years.

23 Counts Two and Three of the information charge you  
24 with securities fraud in violation of Title 15 U.S.C. Section  
25 78 (J) (B) and 78 (F) (F) and Title 17 Code of Federal

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1 Regulations Section 240, 10 (B) (5) and each of those counts  
2 carries a maximum sentence of 20 years imprisonment, a maximum  
3 fine which is the greatest of either five million dollars or  
4 twice the gross pecuniary gain derived from the offense and  
5 twice the gross pecuniary loss of persons other than yourself  
6 as a result of the offense. Each also has a \$100 special  
7 assessment and a term of supervised release of three years.

8 Count four of the information charges you with wire  
9 fraud in violation of Title 18 U.S.C. Section 1343 and carries  
10 a maximum sentence of 0 years imprisonment, a maximum fine  
11 which is the greatest of either \$250,000 or twice the gross  
12 pecuniary gain derived from the offense, or twice the gross  
13 pecuniary loss to person others than yourself as a result of  
14 the offense. It carries a \$100 special assessment and a term  
15 of supervised release of three years.

16 A total maximum sentence of incarceration on the  
17 information is 65 years imprisonment. In addition to the  
18 foregoing the Court must order restitution with respect to the  
19 information and in accordance with U.S.C.

20 In addition, if you are sentenced to any period of  
21 supervised release and violate the conditions of your  
22 supervised release you may be sentenced to all or part of the

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23 supervised release as authorized by statute without any credit  
24 for time already served on supervised release.  
25 Do you understand that?

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2 THE DEFENDANT: Yes.  
3 THE COURT: So you understand these penalties as I've  
4 read them to you?  
5 THE DEFENDANT: Yes, I do.  
6 THE COURT: Have you seen a copy of the information in  
7 which the government makes these charges against you?  
8 THE DEFENDANT: Yes, I do.  
9 THE COURT: Have you discussed it with your attorneys?  
10 THE DEFENDANT: Yes, your Honor.  
11 THE COURT: Are you prepared to enter a plea today?  
12 THE DEFENDANT: Yes, I am.  
13 THE COURT: Santo Maggio, how do you plead?  
14 THE DEFENDANT: Guilty.  
15 THE COURT: Mr. Maggio, before I can recommend that  
16 your plea be accepted I must determine that you understand the  
17 plea and its consequences, that the plea is voluntary and that  
18 there's a factual basis for the plea. For that purpose I must  
19 ask you a number of questions and your answers must be under  
20 oath. Do you understand that the answers you give under oath  
21 may subject you to prosecution for perjury if you do not tell  
22 the truth?  
23 THE DEFENDANT: Yes, I do.  
24 THE COURT: Raise your right hand.  
25 (Defendant Santo C. Maggio sworn)  
THE COURT: Thank you. Please state your full name  
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2 for record.  
3 THE DEFENDANT: Santo C. Maggio.  
4 THE COURT: How far did you go in school?  
5 THE DEFENDANT: I finished high school.  
6 THE COURT: Are you currently being treated by a  
7 doctor or psychiatrist for any reason?  
8 THE DEFENDANT: No.  
9 THE COURT: Are you currently on any medications which  
10 might effect you in being alert for this proceeding?  
11 THE DEFENDANT: No.  
12 THE COURT: Are you any difficulty seeing, hearing or  
13 understanding anything that I am saying?  
14 THE DEFENDANT: No.  
15 THE COURT: Have you had enough time to discuss with  
16 your attorneys how you wish to plead?  
17 THE DEFENDANT: Yes.  
18 THE COURT: Are you satisfied with your attorneys?  
19 THE DEFENDANT: Yes.  
20 THE COURT: Do you understand what the government says  
21 that you did?  
22 THE DEFENDANT: Yes.  
23 THE COURT: Do you understand that have you a right to  
24 plead not guilty?  
25 THE DEFENDANT: Yes.  
THE COURT: Do you understand that you have a right to  
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2 trial by jury on these charges?  
3 THE DEFENDANT: Yes.  
4 THE COURT: Do you understand that if you are to plead  
5 not guilty and go to trial you would be presumed innocent until  
6 the government proved your guilt beyond a reasonable doubt?  
7 THE DEFENDANT: Yes, I do.  
8 THE COURT: Do you understand that if you were to go  
9 to trial you would have a number of important constitutional  
10 rights including the right to be represented by counsel and to  
11 have counsel appointed for you if you cannot afford an  
12 attorney?  
13 THE DEFENDANT: Yes.  
14 THE COURT: Do you understand that at trial you cannot  
15 be forced to testify against yourself?  
16 THE DEFENDANT: Yes.  
17 THE COURT: Do you understand at a trial you would  
18 have the right to confront and cross-examine witnesses called  
19 by the government?  
20 THE DEFENDANT: Yes.  
21 THE COURT: Do you understand that at a trial you  
22 would have the right to testify yourself and to call witnesses  
23 on your behalf and to compel their attendance by subpoena if  
24 necessary?  
25 THE DEFENDANT: Yes.  
THE COURT: Do you understand that if your guilty plea  
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2 is accepted there will be no trial of any kind and the only  
3 remaining steps in your case will be a presentence report and  
4 sentencing by Judge Stein?  
5 THE DEFENDANT: Yes.  
6 THE COURT: Have you discussed with your attorney the  
7 role that the sentencing guidelines play in sentencing?  
8 THE DEFENDANT: Yes.  
9 THE COURT: Do you understand that the district judge  
10 will retain discretion regardless of what calculations there  
11 are under the guidelines?  
12 THE DEFENDANT: Yes.  
13 THE COURT: Do you understand that the calculation  
14 under the guidelines will take into account a number of factors  
15 including the actual conduct in which you engaged, any victims  
16 of the offense, the role that you played in the offense,  
17 whether or not you have accepted responsibility for your acts,  
18 whether you have any criminal history or whether you have  
19 engaged in any obstruction of justice; do you understand that?  
20 THE DEFENDANT: Yes.  
21 THE COURT: Between now and the date of sentencing the  
22 probation department will conduct an investigation and will  
23 prepare a presentence report. Your attorney, the government  
24 and Judge Stein will receive copies. Both your attorney and  
25 the government will have the opportunity to object if they  
believe anything in the report is inaccurate; do you understand  
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2 that?  
3 THE DEFENDANT: Yes.  
THE COURT: Do you understand that until the  
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4 presentence report is prepared neither your attorney nor the  
5 government, nor Judge Stein will be able to determine precisely  
6 what range of penalties will be calculated under the  
7 guidelines.

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand than regardless of  
10 calculation and the guidelines your sentence cannot exceed the  
11 maximums that I advised you of earlier?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that under certain  
14 circumstances both you and the government may have the right to  
15 appeal the sentence imposed.

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that if the sentence is  
18 more severe than you expected you will be bound by your guilty  
19 plea and will not be permitted to withdraw it?

20 THE DEFENDANT: Yes.

21 THE COURT: You understand that parole has been  
22 abolished and that if you are sentenced to any term of  
23 imprisonment you will be required to serve the entire term?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Maggio, are you a citizen of the  
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1 United States?

2 THE DEFENDANT: Yes, I am.

3 THE COURT: Mr. Maggio, I have been handed up a plea  
4 agreement from your case. Have you had an opportunity to  
5 review and go over this agreement with your attorneys?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that one of the  
8 provisions in the plea agreement is that you admit the  
9 forfeiture allegation in the information and that you agree to  
10 forfeit to the United States a sum of money equal to two  
11 billion, four hundred million dollars?

12 THE DEFENDANT: Yes.

13 THE COURT: That is what it says, right?

14 MR. BAROFSKY: Yes, your Honor, that number is  
15 correct.

16 Your Honor, the plea cooperation agreement also  
17 provides, however, that in satisfaction of that amount there  
18 are certain schedules attached to the plea agreement which the  
19 government will accept in satisfaction of that judgment.

20 MR. SCHECTMAN: We don't have quite that much, your  
21 Honor.

22 THE COURT: Okay. I thought had I too many zeros  
23 myself at first.

24 MR. SCHECTMAN: No, you read it right.

25 THE COURT: That represents the amount of the  
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1 proceedings obtained as a result of the offense; do you  
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: You also understand that any forfeiture  
5 would not be treated as satisfaction of any fine, restitution,  
6 cause of imprisonment or any other penalty the Court may  
7 impose?

8 THE DEFENDANT: Yes.

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9 THE COURT: And as indicated in the agreement, there  
10 is a scheduled pay of assets. You have seen the schedule and  
11 you have gone over it with your attorneys?

12 THE DEFENDANT: Yes.

13 THE COURT: To make sure that it's accurate?

14 THE DEFENDANT: Yes.

15 MR. SCHECTMAN: Judge, I might point out for the  
16 record there is a Schedule B as well, which are assets that are  
17 in Mrs.~Maggio's name that are being forfeited as part of the  
18 plea and there is a separate agreement that need not concern  
19 your Honor in this matter involving Mrs.~Maggio.

20 THE COURT: Is that correct, Mr. Maggio, there is also  
21 a Schedule B?

22 THE DEFENDANT: Yes.

23 THE COURT: That's Mrs.~Maggio's assets?

24 THE DEFENDANT: Yes.

25 THE COURT: That is also covered by the agreement that  
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2 you made with the government?

3 THE DEFENDANT: Yes.

4 THE COURT: You are also understand the agreement  
provides that you cooperate fully with the United States  
5 attorney's office?

6 THE DEFENDANT: Yes.

7 THE COURT: And that in exchange for that cooperation,  
8 assuming that the office determines that you have made full and  
9 accurate disclosures to them, the government has agreed that it  
10 will submit a motion pursuant to Section 5K1.1 of the  
11 sentencing guidelines in your favor?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that if for any reason  
14 the government determines that it will not file such a motion  
15 you will not be allowed to withdraw your plea?

16 THE DEFENDANT: Yes.

17 THE COURT: You understand that even if the government  
files such a motion sentencing will still be at the sole  
18 discretion of the Court?

19 THE DEFENDANT: Yes, I did.

20 THE COURT: Is there anything else in the agreement  
that I might want to highlight?

21 MR. BAROFSKY: No, your Honor.

22 THE COURT: All right. Other than the representations  
in this agreement, have any promises been made to you by anyone

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2 to influence you to plead guilty?

3 THE DEFENDANT: No.

4 THE COURT: This constitutes the sole agreement that  
you have?

5 THE DEFENDANT: Yes.

6 THE COURT: Has anyone promised you a specific  
7 sentence if you plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: Has anyone made any threats to you to  
10 influence you to plead guilty?

11 THE DEFENDANT: No.

12 THE COURT: Are you making this plea voluntarily of  
13 your own freewill and choice?

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14 THE DEFENDANT: Yes, I am.  
15 THE COURT: The elements of the offense is?  
16 MR. BAROFSKY: Your Honor, for Counts One defendant's  
17 is charged with conspiracy. The government would be required  
18 to prove each of the elements beyond a reasonable doubt.  
19 First, that there is an assistance of a an agreement or  
20 understanding to commit one of the objects charged in the  
21 information.  
22 Second, the defendant knowingly became a member of  
23 that agreement or understanding.  
24 And third, that one of the conspirators or  
25 coconspirators or Mr. Maggio knowingly committed at least one  
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2 overt act in furtherance of the conspiracy during its life.  
3 With respect to the securities frauds counts in two  
4 and three, first, the defendant in connection with the purchase  
5 or sale of securities, here the notes that are described in  
6 Count Two and the common stock of Revko that's referenced in  
7 Count Three did one or more of the following: Employed a  
8 devise, scheme or artifice to defraud or made an untrue  
9 statement of a material fact or admitted to state a material  
10 fact which made what was said under the circumstances  
11 misleading or engaged in an act, practice or course of business  
12 that operated or would operate as a fraud or deceit upon a  
13 purchase of a seller for securities.  
14 Second the defendant acted knowingly, willfully with  
15 the intent to defraud.  
16 And third, the defendant used or caused to be used any  
17 means or instruments of transportation or communication in  
18 interstate commerce or use of the mails in furtherance of that  
19 fraudulent conduct.  
20 and with respect to the Count Four wire fraud, first,  
21 that there was a scheme or artifice to defraud that existence  
22 the defendant must have participated in the scheme with the  
23 intent to defraud misrepresentations or omissions must have  
24 related to a material fact, that the scheme was executed to  
25 obtain money or property.  
And finally, that in execution of the scheme the  
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2 defendant used or caused to be used interstate wires or that  
3 such use was reasonably foreseeable to him.  
4 THE COURT: Mr. Maggio, did you hear that recitation?  
5 THE DEFENDANT: Yes.  
6 THE COURT: Did you understand that if the government  
7 were to proceed to trial against you it would have the burden  
8 of proving each element for each offense, that is, each count  
beyond a reasonable doubt.  
9 THE DEFENDANT: Yes.  
10 THE COURT: Did you commit the offenses for which you  
11 have been charged, Mr. Maggio?  
12 THE DEFENDANT: Yes.  
13 THE COURT: Tell me what you did.  
14 MR. SCHECTMAN: Judge, if it's acceptable to you  
15 Mr. Maggio has written out a statement that I think speaks to  
16 all four crimes.  
17 THE COURT: Considering the complexities here I'll  
18 allow him to read and then if it's not he could fill in the

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19 gaps.

20 THE DEFENDANT: Your Honor, from the late 1990s to  
21 October 2005 I was a senior executive at Revko Ink. During  
22 that period I participated with others to hide the true  
23 financial health of Revko from banks, counter-parties, auditors  
24 and investors. With my knowledge and active participation  
25 Revko's substantial losses were covered up as revenues padded

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2 and certain operating expenses were moved off its book. Among  
3 the acts I personally engaged in the signing of loan agreements  
4 referencing paragraphs 61-D and 61-P of the indictment.

5 As a result of my conduct and that of my  
6 coconspirators false financial statements were issued to obtain  
7 debt financing from the public including 9 percent senior  
8 subordinated notes referenced in Count Two of the indictment.

9 To consummate the sale of 57 percent of Revko to a  
10 group headed by Thomas H. Lee in 2004 and to obtain \$800  
11 million in bank financing the same year and to effect the Revko  
12 initial public offering in 2005. Moreover, with my knowledge  
13 false financial statements were filed with the SEC including  
14 form 10K referencing Count Four. The mails and interstate  
15 wires were used as part of the fraudulent scheme.

16 I deeply regret my conduct and the harm that it has  
17 caused.

18 THE COURT: First of all, with respect to all of the  
19 activities that you've indicate you participated in it  
knowingly?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. Where did this take place.

22 THE DEFENDANT: In New York, New York. Manhattan, New  
23 York.

24 THE COURT: You said coconspirators, so other people  
25 had agreed with you to effectuate this scheme?

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2 THE DEFENDANT: Yes.

3 THE COURT: And the intent of this scheme was to  
defraud?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, I know you mentioned the notes and I  
6 think you mentioned the 2005 initial offering that was  
7 addressed to Count Three of the information, that is, whether  
8 or not you had a scheme to defraud people based on the value of  
9 the stock?

10 THE DEFENDANT: Correct, your Honor.

11 THE COURT: Mr. Maggio?

12 THE DEFENDANT: Yes.

13 THE COURT: That did involve false statements?

14 THE DEFENDANT: Yes.

15 THE COURT: False filings that you've indicated?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, you said you used the mails which  
18 interstate -- I mean, you used the mails, a phone? How did you  
19 use --

20 THE DEFENDANT: Yes, used regular mail. we used  
21 Express Mail. We used e-mail all to effect the scheme.

22 THE COURT: You submitted false statements in the  
23 mail?

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24 THE DEFENDANT: False statements, loan agreements as  
25 referenced here, yes.  
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1 THE COURT: Okay. Any --  
2 MR. BAROFSKY: Your Honor, I'll just represent to the  
3 Court that with respect to Count Four, the wire transmission  
4 did in fact originate in the Southern District of New York in  
5 Manhattan and was wired outside of the Southern District to  
6 Virginia.  
7 THE COURT: Anything else?  
8 MR. SCHECTMAN: Nothing, your Honor.  
9 MR. BAROFSKY: No, your Honor.  
10 THE COURT: I am depending on you here. Does any  
11 either counsel know of any reason why I should not recommend  
12 that this plea not be accepted?  
13 MR. BAROFSKY: No, your Honor.  
14 MR. SCHECTMAN: No, your Honor.  
15 THE COURT: Based on defendant's allocution and the  
16 recommendations by the government I find that the defendant  
17 understands the nature, the charges and consequences of his  
18 guilty plea. I also find that the plea is voluntary and that  
19 there is a factual basis for the plea. I, therefore, recommend  
20 that the plea be accepted and direct that a presentence report  
21 be reaped.  
22 Sentencing will take place before Judge Stein on.  
23 MR. BAROFSKY: May 9, at 2 p.m.  
24 THE COURT: Is there anything else that needs to be  
25 addressed today.

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1 MR. BAROVSKY: Not from the government, your Honor.  
2 MR. SCHECTMAN: Not from the offense.  
3 THE COURT: We are adjourned.  
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